

## REMARKS

Applicants submit the aforementioned amendments and following remarks in response to the Office Action mailed October 22, 2007.

A Petition to Revive An Application Unintentionally Abandoned is simultaneously being filed herewith, in response to the Notice of Abandonment mailed April 8, 2008.

Claims 1-5, 7 and 13 are pending in the instant application.

Claims 1, 4, 5, and 13 have been amended. Support for amendment can be found throughout the originally filed specification. No new matter has been added.

Reconsideration is respectfully requested in view of the above amendments and the following remarks.

### **Rejection under 35 U.S.C. § 102(a)**

Claims 1-5, 7, and 13 were rejected under 35 U.S.C. § 102(a) as being anticipated by WO 00/20450 to Johns et al. See Office Action, page 7.

WO 00/20450 discloses three new genes and proteins derived therefrom encoding  $\alpha 2\delta$ -C and/or  $\alpha 2\delta$ -D which are subunits of many calcium channels. See Abstract. The polynucleotide sequences of the  $\alpha 2\delta$ -D genes are set forth in SEQ ID NO: 4 and the polypeptide encoded thereof are set forth in SEQ ID NO: 6.

Claims 1, 4, 5, and 13 have been amended to specify the sequence length. The newly amended claim 1, 5, and 13 recite “a polypeptide having the full-length sequence of SEQ ID NO: 10.” Also the newly amended claim 4 is directed to “nucleic acid molecule having the full-length nucleotide sequence of SEQ ID NO: 9.” Neither SEQ ID NOs: 4 or 6 in WO 00/20450 cited by the Examiner have the full-length sequences of SEQ ID NOs: 9-10. Specifically, SEQ ID NO: 6 lacks amino acids 1-12, 1040-1090 as set forth in SEQ ID NO: 10. Similarly, SEQ ID NO: 4 lacks nucleotides 1-224, 3308-3486 as set forth in SEQ ID NO: 9.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”

*Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051,

1053 (Fed. Cir. 1987). Since WO 00/20450 does not teach or suggest the full-length sequences of SEQ ID NOs: 9-10, it cannot anticipate claims 1, 4, 5, 13 as presently amended nor their dependant claims 2-3, 7.

Accordingly, the rejection under 35 U.S.C. § 102(a) has been overcome and should be withdrawn.

**Rejections under 35 U.S.C. § 112, first paragraph**

Claims 1-5, 7, and 13 are further rejected under 35 U.S.C. § 112, first paragraph. The Examiner rejects the claims for failing to comply with the written description requirement as the claims are drawn to a genus of molecules being hybridizable to SEQ ID NO: 9 or polynucleotide encoding a polypeptide of SEQ ID NO: 10. See Office Action, page 5. Applicants respectively transverse this rejection for the same reason as stated above. Claims 1-5, 7, 13 have been amended to recite the full-length sequence of SEQ ID No. 10.

In view of the forgoing, the rejections under 35 U.S.C. § 112, first paragraph, have been overcome and should be withdrawn.

**Rejections under 35 U.S.C. § 112, second paragraph**

Claims 1-5, 7, and 13 are rejected under 35 U.S.C. § 112, second paragraph. The Examiner rejects claims 1, 5, 13 as being vague and indefinite in reciting “ $\alpha$ 2 $\delta$ -4 calcium channel”, “a polypeptide having a sequence of SEQ ID NO: 10”, and claim 4 as being vague and indefinite in reciting “having a nucleotide sequence of SEQ ID NO: 9.”

In response to the rejection on polypeptide and nucleotide sequences, Applicants have amended claims 1, 5, 13 to recite the full-length sequence of SEQ ID No: 10 and claim 4 to recite the full-length sequence of SEQ ID NO: 9 as stated above. However, Applicants are not clear on Examiner’s objection on the ground that ‘the claim does not distinctly identify the  $\alpha$ 2 $\delta$ -4 calcium channel protein’ and ‘no definitive characteristics associated the  $\alpha$ 2 $\delta$ -4 calcium channel protein’ in rejecting the term “ $\alpha$ 2 $\delta$ -4 calcium channel protein” as being vague and indefinite. See Office Action, page 3. MPEP states that an applicant is entitled to be his or her own lexicographer to describe the claimed invention. See MPEP 2106. Thus, so long as

the meets and bounds are clearly set out in the specification, the term “ $\alpha 2\delta$ -4 calcium channel protein” or any other substitutes shall not be deemed vague and indefinite. This is exactly the situation here. It seems that the Examiner is objecting to the scope the claim, which applicants has amended specifically to direct the invention to the full length of the nucleotides, as opposed to the meaning of the term “ $\alpha 2\delta$ -4 calcium channel protein”. For example, the newly amended claim 5 is directed to an expression vector to express an  $\alpha 2\delta$ -4 calcium channel protein in a recombinant host cell wherein said vector contains a nucleic acid sequence encoding a polypeptide having the full-length sequence of SEQ ID NO: 10. If that is what the Examiner objects to, the scope of the claims as presently amended is now clear, so that the term “ $\alpha 2\delta$ -4 calcium channel protein” is clear and definite as well.

In view of the foregoing, the rejection on claims 1, 4, 5, 13 and dependant claims 2-3, 7 under 35 U.S.C. § 112, second paragraph, have been overcome and should be withdrawn.

Allowance of claims 1-5, 7 and 13 is respectfully requested.

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